IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1916 of 1982
With
FIRST APPEAL No. 1847 of 1982
With
FIRST APPEAL No. 1848 of 1982
With
FIRST APPEAL No. 1914 of 1982

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SP TEXTILES - Appellant(s)
Versus
ASHOKKUMAR P DALAL - Defendant(s)

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Appearance :
MR BR SHAH for Appellant(s) : 1,
NANAVATI ASSOCIATES for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 11/08/2006

COMMON ORAL JUDGMENT

1. As common question of law and facts arise in this group of appeals, they are being disposed of by this common judgment and order.

2. All these first appeals are filed by the appellants herein – original applicants

challenging the common judgment and order dated 31st August, 1982 passed in Civil Misc. Application Nos.549 of 1980, 556 of 1980, 552 of 1980 and 551 of 1980 respectively in dismissing the said applications by which, the objections were submitted in the execution application filed by the respondent herein – original decree holder.

3. The respondent herein – Ashokkumar P. Dalal was the plaintiff in Civil Suit No. 2037 of 1978 and the defendant was one Adarsh Co-operative Industrial Estate Limited (hereinafter referred to as “the Society”). That the properties occupied by the appellants herein – original applicants and other applicants were taken in attachment in the execution of the decree against the aforesaid society and all the occupants – holders of those sheds filed the Civil Misc. Applications challenging the excutability of the decree against the said property on the ground that the said society had no right, title or interest in the property. The applications were resisted by the original

judgment creditor and he denied all the allegations made in the applications. On the basis of the pleadings, the learned trial Court raised the issue that *"Whether the applicants prove that in property Shed occupied by them the society has no right title or interest?"* Considering the bye-laws of the estate, Exh.44, the learned trial Court held that the said society is a tenant - partnership society and accordingly dismissed all the applications. Being aggrieved and dissatisfied with the common judgment and order dated 31st August, 1982 in dismissing all the Civil Misc. Applications, the respective applicants, occupiers of the sheds, have preferred the present appeals.

4. Earlier Shri Chetan Pandya, learned advocate appeared for Shri S.V.Raju, learned advocate appearing on behalf of some of the appellants. Today, when these appeals are called out thrice, the learned advocates are absent all through out. These being old appeals of the year 1982, this Court decided to decide and dispose of the present appeals on merits ex-parte.

5. From the appeal memo it appears that the main contention on behalf of the appellants is that the learned trial Court has materially erred in holding that the society was a tenant – co-partnership society. It is also the contention on behalf of the appellants that the learned trial Court has materially erred in holding that the society was a tenant – co-partnership society and that the superstructure, constructed on the land were belonging to the society. It is also further submitted that the learned trial Court has materially erred in holding that the sheds were allotted to each applicants and others with a right to occupy the same and they had no ownership right in the same. It also appears that it is the contention on behalf of the appellants that the learned trial Court has not properly appreciated the decision of this Court reported in 20 GLR Page-878. The sum and substance and the contention on behalf of the appellants is that the learned trial Court has erred in holding that the society was a tenant – co-partnership society and not a tenant – co-

ownership society and therefore, the said property – sheds could not have been attached in an execution for the dues of the society.

6. All these appeals are opposed by Shri S.J.Shah, learned advocate appearing for Nanavaty Associates, appearing for the judgment creditor. He has taken this Court to the various provisions of the bye-laws of the society reproduced in the impugned judgment and order and has submitted that the learned trial Court has rightly held that the society was a tenant – co-partnership society and that the superstructure belong to the society and the same was then allotted to each member with a right to occupy the same and they had no ownership right in the superstructure and therefore, it is requested to dismiss all these appeals.

7. On the basis of the pleadings and the contentions before the learned trial Court as well as grounds set out in the appeal memo, the sole question, which is required to be

considered by this Court is *Whether the society was a tenant –co-ownership society or tenant – co-partnership society and whether the superstructure belong to the society and their respective members like applicants were permitted to occupy the said sheds*. He has relied upon the judgment of the Full Bench of this Court in case of ***Mulshankar Kunverji V/s. Juvansinhji*** reported in ***20(1) GLR Page-878*** in support of his submission that the society was a tenant – co-partnership and not tenant – ownership and the superstructure belonging to the society. For the purpose of appreciating and considering the said issue, the relevant bye-laws of the society are required to be considered. The relevant bye-laws (Exh.44) reads as under :-

"<u>Clause – 2</u> :- The objects of the society shall be to carry on the trade of building, selling, hiring, letting and developing land in accordance with the Co-operative principles. With a view to provide factory shed and factory building, offices, go downs and sheds for persons engaged or connected with the manufacturing activities of any kind.

And to carry on social, recreative and educational work in connection with its members, tenants and persons using or occupying the premises built, acquired or otherwise made available provided by the society.

And the society shall have full power to do all things it deems necessary or expedient for the accomplishment of all object specified in its bye-laws including powers to purchase, hold, sell, exchange, rent, lease, sub-lease, surrender, transfer or re transfer, the premises including factory sheds and factory buildings, go downs and shops and to sell by instalments and subject to any terms or conditions and to make and guarantee advances to members for building or purchasing property and to erect pull down repair, alter or otherwise deal with any building or structure standing on the land

Clauses 3, 7, 8 & 9 pertain to members which read as under :-

<u>Clause – 3</u> (i) Any person, firm, joint Hindu Family or body corporate directly or indirectly interested or concerned with the business of manufacturing and/or doing any business and competent to enter into contracts as laid down in the Indian Contracts Act and otherwise not

incapable of entering into the contract, shall be eligible to become a member of the society.

(ii) A firm registered under Indian partnership Act and joint family may be admitted as a member of the society in its firm name provided all the partners and the coparceners sign the application for membership. In such a case the partner or the coparcener whose name is first mentioned shall exercise all rights of the merber and other partners or coparceners shall on payment of Rs.1/- each be enrolled as nominal members for the purpose of joint holding of shares along with the first named partner or coparcener of the firm who will be an ordinary member. A nominal member shall exercise no right receive any advantage unless, otherwise specifically provided for under these rules.

(iii) A body corporate registered under the Companies Act may be admitted as a member of the society provided the application form is signed by its Managing Director/Manager/ Principal Officers of the body corporate. The body corporate shall have, however, to appoint somebody under its seal to represent it in the society who shall entitled to become a member of the committee and to vote at the meetings of the committee and society unless his appointment as such representative is cancelled by the body

corporate and another representative is appointed in this place.

<u>Clause - 7</u> ***"No member of the society shall exercise the rights of a member unless and until he holds not less than ten fully paid shares in the Society."***

<u>Clause – 8</u> (1) ***A member may be expelled from the society by the vote of not less than two thirds of the members present and at a general meeting of the society on a motion (which shall be final and conclusive) that in the opinion of the meeting such member has :-***

(a) been a persistent defaulter.

(b) willfully deceived the society by false statement.

(c) been bankrupt or legally disabled.

(d) been criminally convicted.

(e) intentionally done any act likely to injure the credit of the society.

(f) gravely misused or permitted to be misused the premises rented or allotted to him by the society of habitually acted in a disgraceful manner of a manner which has caused serious or annoyance to the neighbours

or

(g) willfully disobeyed any decision of the

committee or any properly appointed officer of the society.

(2) The committee shall give a member 15 days written notice of the proposal to expel him.

(3) To a member expelled shall be refunded the amount (less a deduction therefrom of 5%) redeceived by the society in respect of the shares held by him at the date of the resolution for his expulsion. If the member has paid the purchase price of the plot and/or structure, ten percent shall be deducted from the said amount and the balance shall be repaid to him, such shares, plot and/or structure shall vest in the society, who will be free allot the same to any other member.

(4) Re-admission of expelled members :- No expelled member shall be re-admitted except by a vote of two third of the members present and voting at any General Meeting on a motion of which no notice has been given.

<u>Clause - 9</u> The liability of a member shall not exceed the amount (if any unpaid on the shares in respect of which he or his estate is liable.

Clause - 10 *The capital of the society shall be raised by shares of the nominal value of Rs.100/- each had shall be held entirely by member of the society.*

Clause - 13 *(1) Any share held by a member of the society may, subject to bye-law, be sold to any member provided that no such sale may take place without the previous sanctioned of the committee who shall have full discretion in granting or with-holding such sanction. Transfers may be in the form set out in the bye-laws or any other form approved by the committee.*

(2) Registration of Transfer :- Until the transfer of a share is registered no right shall be acquired against the society by the transferee, nor shall any claim of the society upon the transfer be affected.

Clause – 17 *(1) If nomination made :- On receiving satisfactory proof of the death of a member the society may transfer the share or interest of the member to the person nominated in accordance with the rules made in this behalf or if there is no person so nominated to such persons as may appear to the committee to be the heir or legal representative the member or pay*

such nominee, heir or legal representative a sum representing the value of such nominator's share or interest as ascertained in accordance with the rules or bye-laws after deducting all sums due to the society from the nominator. Provided that the society shall transfer the share or interest of the nominator to such nominee, heir or legal representative the case may be being qualified in accordance with the rules and these bye-laws for membership of the society or on his application within one month of the death of the nominator to any person specified in the application who is so qualified.

Provided further that where there are more than one nominee, heir or legal representative, one of them may be admitted as an ordinary member others being nominal members admitted as per bye-laws No.1. The question as to who should be the ordinary member exercising the right of membership shall be decided among themselves by the nominee, heirs or legal representatives as the case may be and their decision shall be communicated to the Managing Committee. In case they fail to decide so within a reasonable time, the matter shall be decided by the Managing Committee and their decision shall be final.

(2) The society may pay all other moneys due to the nominator from the society to such

nominee, heir or legal representative as the case may be.

(3) All transfers and payments made by the society in accordance with this bye-law shall be valid and effectual against any demand made upon the society by any other person.

<u>Clause - 18</u> No member shall be a tenant of the society unless he holds atleast ten shares of the nominal value of Rs.100/-.

<u>Clause - 32</u> The society shall have a first and paramount charge upon the share interest in the capital and on the deposits of a member or past member and upon dividend, bonus or profits payable to a member or past member and on the plot allotted or leased and also on superstructure if any on the plot in respect of any debt due from such member or past member to the society and may set off any sum credited or payable to a member or past member in or towards the payment of such debts.

<u>Clause – 63</u> "After providing for the interest upon any loans and deposits and for placing to the credit of a sinking fund a sum representing ½ per cent per annum on the total cost of the society's buildings 10 per cent of the net

profits of all business carried on by or on account of the society shall be placed at the credit of a Reserve Fund.

8. Now, considering Clause – 2, the object of the society was to carry on social, recreative and educational work in connection with its members, tenants and persons using or occupying the premises built, acquired or otherwise made available provided by the society and also to carry on trade of building and by selling, hiring, letting and developing land in accordance with the Co-operative principles. The purpose behind it was to provide factory sheds and factory buildings, godowns and shops for persons engaged or connected with manufacturing activities of any kind. The society was also having the power to sell, transfer, mortgage, etc, the premises. Thus, the object of the society was to construct the premises for the purpose of trade or for occupation of its members. Nothing is in the bye-laws to show that the property vests in the individual member. On considering the bye-laws, it appears that there are no rights in the member to deal with the

premises occupied by the applicants independent of society. Clause – 9 was pertaining to the liability of a member, which was not to exceed the amount if any unpaid on the shares in respect of which he or his estate is liable and therefore, the membership is a limited liability restricted to the unpaid amount of share but had nothing to do with the ownership of the society. Clause – 13 provides a right given to the member to sell his shares but was subject to previous sanction of the committee who had full discretion in granting or withholding the same. Now, considering the various bye-laws, as stated above, it is not established that the superstructure constructed by the society was to be of the ownership of the occupant member. It is also required to be noted that the society borrowed the loan from the bank in its own name. Nothing is on record to show that the construction was carried out by the members – appellants herein by themselves and not by the society. Now, considering non-production of the balance sheet of the society and certain things not on record, which is discussed by the learned

trial Court, the finding of the learned trial Court that the superstructure belonged to the society and the same was then allotted to each member with a right to occupy the same and they had no ownership right in the superstructure, cannot be faulted and/or the same cannot be said to be contrary to the evidence. On the contrary, considering the various provisions of the bye-laws and that in absence of any evidence that the sheds were constructed by the applicants themselves and that the society individually in its own name took the loan, the learned trial Court was justified in giving the aforesaid finding.

9. Now, considering the object of the society, which is reproduced hereinabove, it was to construct the premises for the members and to carry out the business of constructing premises with a power to deal with it. Clause – 63 of the bye-laws specifically provides and refers to the building of the society and/or sinking fund for the same. Now, considering the aforesaid finding that the superstructure belonging to the

society, constructed by the society and then allotted to each member with a right to occupy the same and that the allottee had no ownership right in the superstructure, it can be safely held that the society was a tenant – co-partnership society and not a tenant – co-ownership society. The rights which were conferred upon the applicants were restricted to occupy and enjoy it and that the applicants had no personal interest independent of the society in the immovable property of the society and therefore, it can be safely held that the society had right, title and interest in the property referred to in each application. At this stage, some observation of the Full Bench of this Court in case of Mulshanker Kunverji V/s. Juvansinhji (Supra) are required to be considered. The Full Bench of this Court has observed that “A tenant co-partnership society is a society where the land is owned by the society and upon which houses are constructed by the society for the benefit of its members and it is a co-operative venture of all the members of a co-operative housing society, which brings

into being the houses which the members in their turn may occupy. They are constructed out of its own assets and out of the moneys borrowed by it. The debt is discharged by the society collecting periodical contributions from them in specified amount. In such a society, it is the society in which the land and the buildings in the eye of law vest. Since the immovable property and land and the houses vested in the society, no title is transferred to the purchaser with the transfer of the shares. Title continues to remain with the society. Right to occupy and enjoy is transferred by the transfer of his shares by one member to another. This express does and cannot therefore embrace within its sweep any personal interest, independent of the society, which a member may have in the immovable property, which he occupies.” Thus, as held by the Full Bench of this Court, whenever and wherever a land belongs to society and the superstructure is constructed by the society, which is allotted to the individual members for its occupation, the title and the ownership

continues to that of the society as it is a tenant – co-partnership society. In that view of the matter and considering the aforesaid bye-laws and the findings, the society being a tenant – co-partnership society and the lands and the superstructure belong to the society, the learned trial Court has rightly dismissed all the applications. This Court is in complete agreement with the reasoning and findings of the learned trial Court.

10. For the reasons stated above, all the appeals fail and they are accordingly dismissed. Ad-interim relief, if any, stands vacated forthwith in all the aforesaid appeals. However, there shall be no order as to costs.

[M.R.SHAH, J.]

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